



# Legal Update

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***The Appeals Court holds that police lacked good reason to display a single photograph of a larceny suspect to a pawn shop owner two days after the theft in response to the owner's request to see a photo of "the suspect."***

***Commonwealth v. Carlson***, 92 Mass. App. Ct. 710 (2018): A couple in their seventies hired a professional moving company to move from their single-family home in Templeton to a condo. The next day, September 1, 2013, the couple reported to police that seventeen pieces of jewelry valued at approximately \$30,000 were missing; only empty boxes remained in the dresser drawers where she had stored the jewelry.

On September 2, 2013, police continued investigating and spoke with the owner of a pawn shop. The owner told police that on the day of the move that a man had entered the shop around 3:00 P.M. wanting to sell jewelry. Initially the pawn shop owner was not willing to purchase the jewelry because the man did not have identification. The owner agreed to hold the jewelry for a three week loan and he asked the police if they had a picture of the suspect. After showing a single photograph, the pawn shop owner positively identified the defendant as the person who had come into the shop and pawned jewelry on the day of the theft. The pawnshop owner also gave police an envelope containing the pawned jewelry which was later identified by the couple as the pieces that were taken during the move. The defendant was charged and convicted of Larceny over \$250. The defendant filed a motion to suppress the identification and argued that the single photograph array violated his constitutional rights.

**Conclusion:** The Appeals Court suppressed the identification and held that the police did not have a good reason to conduct a single-photograph identification based on the totality of the circumstances in this case.

One-on-one identification procedures are generally disfavored because they are inherently suggestive and is equivalent to a show-up. The burden is on the defendant to prove by preponderance of the evidence that the police procedure was "unnecessarily suggestive and conducive to irreparable mistaken identification as to deny the defendant due process of law."

The Appeals Court had to consider whether the police had a good reason to use a one-on-one identification procedure. *Commonwealth v. Austin*, 421 Mass. 357, 361 (1995). "The existence of 'good reason' for a show-up identification is a question of law to be decided by an appellate court, based on facts found by the motion judge." *Commonwealth v. Dew*, 478 Mass. 304, 307 (2017). The "good reason" analysis "cannot be generalized," and "each case must be resolved on its own peculiar facts." See *Commonwealth v. Odware*, 429 Mass. 231, 235 (1999) (a judge must examine "totality of the circumstances" to determine whether identification procedure is unnecessarily suggestive.) "Relevant to the good reason examination are the nature of the crime involved and corresponding concerns for public safety; the need for efficient police investigation in the immediate aftermath of a crime; and the usefulness of prompt confirmation of the accuracy of investigatory information, which, if in error, will release the police quickly to follow another track." "Good reason" exists where some combination of the factors collected in *Austin* is present. Some of these factors used in the good reason examination would include:

1. The nature of the crime;
2. Concerns for public safety;
3. The need for efficient police investigation after a crime occurs;
4. Prompt confirmation of the accuracy of investigatory information, which, if in error, will release the police quickly to follow another track.

Here, none of the factors described in the *Austin* case were present. This case involved a property crime, not one of violence. Second, there were no immediate safety concerns and the identification was not made in the immediate aftermath of the crime. Lastly, there was no suggestion the detective's investigation would have been derailed unless he immediately used the single-photograph display. The Commonwealth contended that the detective's knowledge that stolen jewelry can often be melted down quickly qualified as a good reason to use an inherently suggestive identification procedure. The Appeals Court found the Commonwealth's argument unpersuasive and concluded that the facts of this case did not support the argument that the police had a good reason to use a single photograph identification procedure.